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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/064,312 | 07/01/2002 | Elizabeth A. Arndt | 59405 | 6411 |

27148 7590 07/16/2003

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EXAMINER

TRAN LIEN, THUY

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

1761

DATE MAILED: 07/16/2003

5

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/064,312

Applicant(s)

ARNDT ET AL.

Examiner

Lien T Tran

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Art Unit: 1761

1. The 112 second paragraph rejection of claims 1-11 is hereby withdrawn.
2. The 112 first paragraph rejection of claim 1 is hereby withdrawn.
3. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker et al in view of McWard for the same reason set forth in paragraph 5 of the previous office action.
4. The obviousness-double patenting rejection of claims 1-11 over claims 1-2 of US Patent No 6503555B1 is hereby withdrawn due to the filing of the terminal disclaimer.
5. In the response filed April 30, 2003, applicant argues the '557 patent does not teach the production of a food product without the addition of a high fat ingredient or compound coating and extruding at temperature between 66-120 degree C. Applicant states the temperature disclosed in the patent is a forming temperature. This argument is not persuasive. The language of the claims do not exclude the coating and fat ingredient required by Becker et al. As to the temperature of 37-51 degree C, applicant has not shown that this temperature range is not capable of cooking. The cooking of a product is not determined only by the temperature, but also the duration of the food product at that temperature. Becker et al teach the products after extrusion are ready-to-eat snacks or confectionery items. The products include grains such as corn, wheat, barley, rye, soy, rice, oats and mixtures thereof. Flours made from the grains are also used. The fact that the products are ready to eat means that the products are cooked during extrusion because one can not characterize a products as being ready to eat if they contain raw grains or flour. Becker et al do not disclose any form of cooking after extrusion; thus, the products are cooked during extrusion. As to the temperature range

Art Unit: 1761

claimed, it would have been obvious to use higher temperature for a shorter period of time or vice versa, as long as the end objective is obtained. The Becker et al product is a cooked product because it is a ready-to-eat food item containing raw ingredients that does not require any form of cooking after extrusion. Applicant further argues the food product produced in the "557 patent will be a chewy food product with a higher density. The argument is not supported by factual evidence; also, the claims do not contain any limitation of chewy or density.

6. Applicant's arguments filed April 30, 2003 have been fully considered but they are not persuasive.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 703-308-1868.

Application/Control Number: 10/064,312

Page 4

Art Unit: 1761

The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

7/13/03


LIEN TRAN
PRIMARY EXAMINER
Group 1702